

GRANTING THE CONSENT OF CONGRESS TO THE BOUND-  
ARY CHANGE BETWEEN GEORGIA AND SOUTH CAROLINA

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SEPTEMBER 8, 1999.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. GEKAS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.J. Res. 62]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 62) granting the consent of Congress to the boundary change between Georgia and South Carolina, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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PURPOSE AND SUMMARY

House Joint Resolution 62 grants the consent of Congress to an interstate compact establishing a portion of the boundary between

Georgia and South Carolina along the Savannah River. The resolution also gives the states broad discretion to come up with a final, binding technical description of that resolved boundary line.

#### BACKGROUND AND NEED FOR THE LEGISLATION

As “most [state] boundaries are just a series of words on a piece of paper,”<sup>1</sup> they are often the subject of legal disputes. While the Supreme Court has original jurisdiction over such disputes,<sup>2</sup> interstate compacts have long been used as an alternative instrument to resolve border disputes between states.<sup>3</sup> Since boundary changes affect the political power and influence of the states, they require Congressional consent under art. I, § 10, cl. 3 of the Constitution.<sup>4</sup> Once the boundary line of a state is set, however, either by compact or otherwise, Congress is without power to change the line without that state’s consent.<sup>5</sup>

On April 28, 1787, Georgia and South Carolina—through duly appointed commissioners—entered into the Beaufort Convention pursuant to the then valid Articles of Confederation of 1778.<sup>6</sup> The Convention set the boundary between the states at the centerline of the Savannah River, except where there are islands in the river, in which case the boundary was set to the centerline between the islands, which were part of Georgia, and the South Carolina riverbank.<sup>7</sup>

Over time, however, the states disagreed on whether the centerline should be measured at the low-water mark or at the ordinary level.<sup>8</sup> The Supreme Court, in 1922, decided that the proper measurement was at the ordinary water level.<sup>9</sup> Nonetheless, the boundary line was the subject of protracted debate as new islands emerged in the river, the Army Corps of Engineers dredged certain parts of the river, South Carolina claimed adverse possession over a set of islands in the river, and the states disputed the boundary at the mouth of the river on the Atlantic Ocean.<sup>10</sup> The issue gained prominence as the disputed land became critical to expanding the Port of Savannah, and as the potential of offshore oil reserves arose.<sup>11</sup> At one point, South Carolina refused to “extradite to Georgia a . . . South Carolina shrimp-boat captain who had been accused of shrimping illegally in the waters claimed by Georgia. . . . [and] who insisted he had never left South Carolina waters.”<sup>12</sup>

Finally, in 1990, the Supreme Court ruled, *inter alia*, that Georgia lost sovereignty over certain islands to South Carolina by the

<sup>1</sup> Eric Johnson, *Border Disputes Linger in Many States: Families Have Lost Land Under Taxation Conflicts*, THE DALLAS MORNING NEWS, April 17, 1993, at 41A (quoting Stephen Pousardien, a map expert with the United States Geological Survey).

<sup>2</sup> U.S. CONST. art. III, § 2, cl. 1.

<sup>3</sup> Felix Frankfurter and James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L. J. 685, 696 (1925). See also WILLIAM KEVIN VOIT, INTERSTATE COMPACTS & AGENCIES 19 (1998) (listing 25 interstate boundary compacts).

<sup>4</sup> *Virginia v. Tennessee*, 148 U.S. 503, 518, 520 (1893).

<sup>5</sup> *New Mexico v. Colorado*, 267 U.S. 30, 41 (1925); *Louisiana v. Mississippi*, 202 U.S. 1, 41 (1906).

<sup>6</sup> See *Georgia v. South Carolina*, 257 U.S. 516, 518-19 (1922).

<sup>7</sup> *Id.* at 517-18.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 521.

<sup>10</sup> See generally *Georgia v. South Carolina*, 497 U.S. 376 (1990).

<sup>11</sup> *Regional News*, UNITED PRESS INTERNATIONAL NEWSWIRE, March 23, 1986, available in Lexis, Nexis library, UPI File.

<sup>12</sup> *War Between the States*, THE ECONOMIST, August 27, 1977, at 42.

doctrine of “prescription and acquiescence,” the emergence of new islands in the river did not move the boundary, and the Army Corps’ operations were instances of avulsion that did not move the boundary.<sup>13</sup> The Court directed the states to draw the boundary in accordance with its opinion and to submit the boundary to the Court for final approval.<sup>14</sup>

The states enlisted the help of the National Oceanic and Atmospheric Administration (NOAA) to update and make usable the 1855 map used by the Supreme Court in its decision.<sup>15</sup> When NOAA completed its work, the states realized that the course of the Savannah River had changed so much since 1855 that they would have to negotiate a different line.<sup>16</sup> Therefore, the two states worked together, pursuant to the Supreme Court’s direction, to arrive at a mutually agreeable solution.<sup>17</sup> That solution covers about 3,000 acres of land.<sup>18</sup>

In translating that new, mutually agreed-upon boundary into law, however, Georgia used a legal description which was less technically precise and accurate than that utilized by South Carolina.<sup>19</sup> Therefore, the versions passed by the states and referenced in H.J. Res. 62 are not currently identical. Nonetheless, Georgia’s law did provide that its textual description could be superceded by a map to be prepared by NOAA and paid for by the two states.<sup>20</sup> If such a map is produced and it is identical to South Carolina’s textual description, then the two states will have an identical agreement and Congress, under H.J. Res. 62, will have consented to the boundary. If, however, NOAA does not produce such a map or the map is not sufficiently clear or identical to bind the states, H.J. Res. 62 gives the states consent in advance to adopt each other’s language or come up with new language to settle their long-standing boundary dispute within five years of enactment.<sup>21</sup> As interstate compacts are generally interpreted like contracts, they are not binding unless there is both an offer and acceptance, and the use of two different texts may—depending on the differences—be construed instead as an offer and a counteroffer.<sup>22</sup> Therefore, under H.J. Res. 62, the Compact will not legally bind the states until

<sup>13</sup> *Georgia v. South Carolina*, 497 U.S. 376 (1990).

<sup>14</sup> *Id.* at 409-10.

<sup>15</sup> 145 CONG. REC. S8271 (daily ed. July 12, 1999) (statement of Sen. Coverdell).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Regional News*, *supra* note 11.

<sup>19</sup> Act of May 29, 1996, 1996 S.C. Acts 375; Act of April 5, 1994, 1994 Ga. Laws 1044. For example, the Georgia law uses a different system of coordinates to describe the boundary line. In addition, it does not specify whether degree measurements should be “true” or “magnetic”. Georgia, in a letter to Speaker Hastert and Vice President Gore, has acknowledged that South Carolina’s description is more appropriate. Letter from J. Ray Crawford, Special Designee of the Governor and Executive Director, State Properties Commission, to Hon. Dennis Hastert, Speaker of the House of Representatives, and Hon. Albert Gore, Jr., President of the Senate 1 (undated) (on file with the Committee).

<sup>20</sup> *Id.* However, NOAA does not, as a matter of policy, place interstate boundary lines on its maps unless directed to do so by the Congress or the courts. Furthermore, NOAA does not recommend the use of a graphical depiction as a legal definition for a state water, due to accuracy issues. *Testimony of Charles Challstrom before the Subcommittee on Commercial and Administrative Law* (visited July 30, 1999) <<http://www.house.gov/judiciary/chal0729.htm>>.

<sup>21</sup> Congress has the power to consent to interstate compacts in advance of their actual existence. *Cuyler v. Adams*, 449 U.S. 433, 441 & n. 9 (1981). See also FREDERICK L. ZIMMERMAN & MITCHELL WENDELL, *THE LAW AND USE OF INTERSTATE COMPACTS* 25 (1976).

<sup>22</sup> FREDERICK L. ZIMMERMAN & MITCHELL WENDELL, *THE LAW AND USE OF INTERSTATE COMPACTS* at 25 (1976).

NOAA produces the requisite map or the states adopt identical language.

#### HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held a hearing on H.J. Res. 62 on July 29, 1999. Testimony was received from the Honorable Jack Kingston of Georgia and Charles Challstrom, Acting Director of the National Geodetic Survey, an agency of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce.

#### COMMITTEE CONSIDERATION

On July 29, 1999, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the resolution H.J. Res. 62 by voice vote, a quorum being present. On August 2, 1999, the Committee met in open session and ordered reported favorably the resolution H.J. Res. 62 without amendment by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, H.J. Res. 62, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 5, 1999.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 62, a joint resolution to grant the consent of Congress to the boundary change between Georgia and South Carolina. If you wish further details on this esti-

mate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

*H.J. Res. 62—To grant the consent of Congress to the boundary change between Georgia and South Carolina.*

H.J. Res. 62 would give Congressional consent to the boundary change between Georgia and South Carolina. Enacting the resolution would result in no cost to the federal government. Because enactment of H.J. Res. 62 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The resolution contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman, who can be reached at 226–2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 10, clause 3 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Consent of Congress*

Section 1 gives Congressional consent to the interstate compact establishing the boundary between Georgia and South Carolina. Since the two states have not yet passed legislation containing identical descriptions of the boundary, the resolution gives the states broad discretion to come up with that final, binding technical description. Under one option, Georgia’s and South Carolina’s current boundary legislation would become identical and binding if NOAA were to publish a map identical to South Carolina’s description.<sup>23</sup> Alternatively, the states could adopt each other’s language or come up with new language to settle their long-standing boundary dispute within five years of enactment.



<sup>23</sup> However, NOAA does not, as a matter of policy, place interstate boundary lines on its maps unless directed to do so by the Congress or the courts. Furthermore, NOAA does not recommend the use of a graphical depiction as a legal definition for a state water, due to accuracy issues. *Testimony of Charles Challstrom before the Subcommittee on Commercial and Administrative Law* (visited July 30, 1999) <<http://www.house.gov/judiciary/chal0729.htm>>. The Committee does not intend to direct NOAA to change its policy on the placement of boundary lines in maps.